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Counsel for SHANGHAI WIN-WING IMP. &
EXP. CO, LTD., Plaintiff.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAGHAI WIN-WING IMP. &
EXP. CO, LTD.,

Plaintiff,

vs.

TETSUYA WATANABE, OAKHILLS HARDWOOD
FLOORS, INC., K&T ASSOCIATES, INC.

Defendants.

No. 3:08-CV-02031-SC

**PLAINTIFF'S APPLICATION FOR
DEFAULT JUDGMENT FOR SUM
CERTAIN PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE
55(b) (1)**

Date: November 7, 2008
Ctirm: 1
Time: 10:00 A.M.

Now comes the Plaintiff Shanghai Win-Wing Imp. & Exp. Co, Ltd.
(hereinafter "Win-Wing"), by and through counsel and pursuant to Fed.
R. Civ. P. 55(b)(1), and hereby requests Default Judgment against
Defendants Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and K&T
Associates, Inc. (hereinafter collectively "Defendants") for the sum
certain of \$342,717.15. The reasons for this Request are fully set
forth in the Affidavit of Gong Peide, which is attached hereto and
incorporated herein by reference.

/ / /

1 I. STATEMENT OF FACTS

2 Win-Wing is a manufacturer and exporter of wood flooring, and is
3 located in the Peoples Republic of China. See *Affidavit of Gong*
4 *Peide, Chairman of Board and duly authorized representative of*
5 *Shanghai Win-Wing Imp. & Exp. Co, Ltd., attached hereto as Exhibit A,*
6 *at paragraph 3.*

7 At all times pertinent hereto, K&T Associates, Inc. (hereafter
8 "K&T") was a corporation registered in the State of California, with
9 its principle place of business at 8625 Central Ave., #A, Stanton, CA
10 90680, was an importer and seller of wood flooring, was a customer of
11 Win-Wing, and was owned and operated by Tetsuya Watanabe (hereinafter
12 "Mr. Watanabe"). See *Exhibit A, at paragraph 4.*

13 At all times pertinent hereto, Oakhills Hardwood Floors, Inc.
14 (hereinafter "Oakhills") was a corporation registered in the State of
15 California, with its principle place of business at 6650 Goodyear Rd.,
16 Benicia, CA 94510, and was owned and operated by Mr. Watanabe. See
17 *Exhibit A, at paragraph 5.*

18 From June 9, 2006 to June 27, 2006, K&T issued several Purchase
19 Orders, under which K&T agreed to and Win-Wing agreed to sell certain
20 wood flooring products. See *Exhibit A, at paragraph 6.*

21 From approximately August 27, 2006 to approximately September 17,
22 2006, Win-Wing shipped the wood flooring products ordered by K&T from
23 China to Long Beach, California, where the product was received by
24 K&T; Win-Wing issued corresponding Commercial Invoices
25 contemporaneously with each shipment. See *Exhibit A, at paragraph 7.*
26 Payments were due for the above-shipped products, pursuant to the
27 Purchase Orders, sixty (60) days after shipment. See *Exhibit A, at*
28 *paragraph 8.*

1 As of approximately November 17, 2006, an outstanding balance of
2 \$394,995.20 remained due and owing by K&T to Win-Wing under the
3 Purchase Orders, Commercial Invoices and corresponding shipments. See
4 *Exhibit A, at paragraph 9.*

5 On or about February 2007, Mr. Watanabe executed a settlement
6 agreement on behalf of K&T and a guaranty on behalf of Oakhills, under
7 which K&T agreed to pay \$352,717.15 to Win-Wing pursuant to a payment
8 plan, and under which Oakhill guaranteed said payment plan. An
9 authentic duplicate of this settlement agreement, payment plan and
10 guaranty is attached hereto as Exhibit 1. See *Exhibit A, at paragraph*
11 *10.* Pursuant to the terms of said settlement agreement, K&T agreed to
12 the following payment plan:

- 13 1. February 2007 - \$2,000.00
- 14 2. March 2007 - \$20,000.00
- 15 3. April 2007 - \$30,000.00
- 16 4. May 2007 - \$30,000.00
- 17 5. June 2007 - \$30,000.00
- 18 6. July 2007 - \$30,000.00
- 19 7. August 2007 - \$42,143.43
- 20 8. September 2007 - \$42,143.43
- 21 9. October 2007 - \$42,143.43
- 22 10. November 2007 - \$42,143.43
- 23 11. December 2007 - \$42,143.43

24 See Exhibit A, at paragraph 11.

25 Pursuant to the terms of said agreement, Oakhills contractually
26 agreed to guaranty the above-stated payment plan. See *Exhibit A, at*
27 *paragraph 12.* Mr. Watanabe signed the settlement agreement and
28 payment plan on behalf of K&T, and signed the guaranty on behalf of

1 Oakhills. *See Exhibit A, at paragraph 13.*

2 At the time Mr. Watanabe signed the settlement agreement, payment
3 plan, and guaranty, he knew that neither K&T nor Oakhills would
4 satisfy the agreement. *See Exhibit A, at paragraph 14.* Mr. Watanabe
5 signed the settlement agreement, payment plan and guaranty to stall
6 legal action against K&T, as a means of delay, and with the purpose
7 and intent of defrauding Win-Wing. *See Exhibit A, at paragraph 15.*

8 K&T and/or Oakhills, through Mr. Watanabe made one payment of
9 \$10,000.00 toward the settlement agreement, payment plan and guaranty,
10 leaving a remaining outstanding unpaid balance of \$342,717.15. *See*
11 *Exhibit A, at paragraph 16.* Win-Wing has demanded payment in full of
12 the outstanding balance, to which K&T, Oakhills and Mr. Watanabe have
13 failed to respond. *See Exhibit A, at paragraph 17.* The amount of
14 \$342,717.15 is an objective sum certain, supported by the attached
15 objective documentation. *See Exhibit A, at paragraph 18.*

16 **II. STATEMENT OF CASE**

17 On April 18, 2008, Win-Wing filed a Complaint against Defendants
18 Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and K&T Associates, Inc.
19 On June 14, 2008, Defendants Tetsuya Watanabe, Oakhills Hardwood Floors,
20 Inc. and K&T Associates, Inc. were served with a Summons and the
21 Complaint. *See Docket Entry # 7.*

22 Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Defendants Tetsuya
23 Watanabe, Oakhills Hardwood Floors, Inc. and K&T Associates, Inc. were
24 required to answer or otherwise respond to Win-Wing's Complaint
25 within twenty (20) days, on or before July 7, 2008. *See Docket Entry*
26 *# 7.* Defendants failed to do so, and on July 21, 2008, upon
27 Application by Win-Win the Clerk issued an Entry of Default as to
28 Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and K&T Associates,

1 Inc. pursuant to Fed. R. Civ. P. 55(a).

2 **III. LAW AND ARGUMENT**

3 **A. WIN-WING IS ENTITLED TO DEFAULT JUDGMENT**

4 **AGAINST DEFENDANTS TETSUYA WATANABE,**

5 **OAKHILLS HARDWOOD FLOORS, INC. AND**

6 **K&T ASSOCIATES, INC. BY THE CLERK OF**

7 **COURTS FOR THE SUM CERTAIN OF \$342,717.15 PURSUANT TO**

8 **FED.R.CIV.P. 55(B) (1) .**

9 Fed.R.Civ.P. 55(b)(1) sets forth the procedure for the entry of
10 default judgment for a sum certain by the Clerk, without application to
11 the Court. Fed.R.Civ.P. 55(b) provides in pertinent part:

12 Judgment. (b) Judgment by default may be entered as follows:

13 (1) By the Clerk. When the plaintiff's claim
14 against defendant is for a sum certain or for a
15 sum which can by computation be made certain, the
16 clerk upon request of the plaintiff and upon
17 affidavit of the amount due shall enter judgment
for that amount and costs against the defendant,
if the defendant has been defaulted for failure
to appear and is not an infant or incompetent
person.

18 Rule 55(b)(1) enables the clerk to enter judgment "when the
19 plaintiff's claim against a defendant is for a sum certain or for a sum
20 which can by computation be made certain." *Volstad v. Collings*, 1993
21 U.S. App. LEXIS 536, * 5 (9th Cir. Jan. 13, 1993). See also *LG Elecs.,*
22 *Inc. v. Advance Creative Computer Corp.*, 2002 U.S. Dist. LEXIS 14652, at
23 * 6 (N.D. Cal. 2002) ("Default judgments are governed by Rule 55 of the
24 Federal Rules of Civil Procedure. Under certain circumstances, default
25 judgment can be entered by the clerk of the court. Fed. R. Civ. Proc.
26 55(b)(1).").

27 In this case, Win-Wing is requesting default judgment in the sum
28 certain amount of \$342,717.15. This sum certain amount is supported


1 by the affidavit of Gong Peide and the attached authenticated Payment
2 Schedule.

3 **IV. CONCLUSION**

4 Based on the foregoing, and based on the attached affidavit and
5 authenticated documentation, Plaintiff Plaintiff Shanghai Win-Wing Imp.
6 & Exp. Co, Ltd., by and through counsel, requests that the Clerk of Court
7 enters Default Judgment against Defendants Tetsuya Watanabe, Oakhills
8 Hardwood Floors, Inc. and K&T Associates, Inc., pursuant to Fed.R.Civ.P.
9 55(b)(1), in the sum certain amount of \$342,717.15.

10
11 Dated: September 3, 2008

COREY & COREY

12 
13 By: Edward E. Corey
14 Attorneys for Plaintiff
15 Shanghai Win-Wing Imp. & Exp.
16 Co., Ltd.
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公 证 书

中华人民共和国上海市虹口公证处

15190 Affidavit

PEOPLES REPUBLIC OF CHINA

[Name of Province]: Shanghai)
)
) ss.

Now comes [Name of Affiant]: GONG PEI DE,

and being first duly sworn, deposes and says that:

1. I am [Position/Job Title]: Chairman of board
at and a duly authorized representative of Shanghai Win-Wing Imp. & Exp. Co., Ltd., (hereinafter "Win-Wing").
2. I have personal knowledge of the underlying facts of *Shanghai Win-Wing Imp. & Exp. Co., Ltd. v. Tetsuya Watanabe, et al.*, in the United States District Court, Northern District of California (San Francisco Division), Case No. 3:08-cv-02031-SC (hereinafter "Watanabe Litigation").
3. Win-Wing is a manufacturer and exporter of wood flooring, and is located in the Peoples Republic of China.
4. At all times pertinent hereto, K&T Associates, Inc. (hereafter "K&T") was a corporation registered in the State of California, with its principle place of business at 8625 Central Ave., #A, Stanton, CA 90680, was an importer and seller of wood flooring, was a customer of Win-Wing, and was owned and operated by Tetsuya Watanabe (hereinafter "Mr. Watanabe").
5. At all times pertinent hereto, Oakhills Hardwood Floors, Inc. (hereinafter "Oakhills") was a corporation registered in the State of California, with its principle place of business at 6650 Goodyear Rd., Benicia, CA 94510, and was owned and operated by Mr. Watanabe.
6. From June 9, 2006 to June 27, 2006, K&T issued several Purchase Orders, under which K&T agreed to and Win-Wing agreed to sell certain wood flooring products.

7. From approximately August 27, 2006 to approximately September 17, 2006, Win-Wing shipped the wood flooring products ordered by K&T from China to Long Beach, California, where the product was received by K&T; Win-Wing issued corresponding Commercial Invoices contemporaneously with each shipment.
8. Payments were due for the above-shipped products, pursuant to the Purchase Orders, sixty (60) days after shipment.
9. As of approximately November 17, 2006, an outstanding balance of \$394,995.20 remained due and owing by K&T to Win-Wing under the Purchase Orders, Commercial Invoices and corresponding shipments.
10. On or about February 2007, Mr. Watanabe executed a settlement agreement on behalf of K&T and a guaranty on behalf of Oakhills, under which K&T agreed to pay \$352,717.15 to Win-Wing pursuant to a payment plan, and under which Oakhill guaranteed said payment plan. An authentic duplicate of this settlement agreement, payment plan and guaranty is attached hereto as Exhibit I.
11. Pursuant to the terms of said settlement agreement, K&T agreed to the following payment plan:

February 2007 - \$2,000.00
March 2007 - \$20,000.00
April 2007 - \$30,000.00
May 2007 - \$30,000.00
June 2007 - \$30,000.00
July 2007 - \$30,000.00
August 2007 - \$42,143.43
September 2007 - \$42,143.43
October 2007 - \$42,143.43
November 2007 - \$42,143.43
December 2007 - \$42,143.43
12. Pursuant to the terms of said agreement, Oakhills contractually agreed to guaranty the above-stated payment plan.
13. Mr. Watanabe signed the settlement agreement and payment plan on behalf of K&T, and signed the guaranty on behalf of Oakhills.

14. At the time Mr. Watanabe signed the settlement agreement, payment plan, and guaranty, he knew that neither K&T nor Oakhills would satisfy the agreement.
15. Mr. Watanabe signed the settlement agreement, payment plan and guaranty to stall legal action against K&T, as a means of delay, and with the purpose and intent of defrauding Win-Wing.
16. K&T and/or Oakhills, through Mr. Watanabe made one payment of \$10,000.00 toward the settlement agreement, payment plan and guaranty, leaving a remaining outstanding unpaid balance of \$342,717.15.
17. Win-Wing has demanded payment in full of the outstanding balance, to which K&T, Oakhills and Mr. Watanabe have failed to respond.
18. The amount of \$342,717.15 is an objective sum certain, supported by the attached objective documentation.

FURTHER AFFIANT SAYETH NAUGHT.

[Sign Gong Peide Affiant's
Name: _____
[Print 龚培德 Affiant's
Name: GONG PEIDE]

SWORN TO BEFORE ME and subscribed in my presence this _____ day of
July, 2008.

NOTARY PUBLIC

公 证 书

(2008)沪虹证外经字第156号

兹证明上海顶达进出口有限公司的法定代表人龚培德
(男, 一九五六年十一月七日出生) 于二〇〇八年八月十二
日来到我处, 在我面前, 在前面的英文文本上签名。

中华人民共和国上海市虹口公证处

公 证 员



二〇〇八年八月十二日



Translation

CERTIFICATE

(2008) H.H.Z.W.J.Z. No 157

This is to certify that the foregoing English version of NOTARIAL
CERTIFICATE (2008) H.H.Z.W.J.Z. No.156 is true and faithful to the
said original Notarial Certificate in Chinese.

ZHENG Yihong (Seal)

Notary Public

The People's Republic of China

Shanghai Hongkou Notary Public Office

(Seal)

Dated. August 12, 2008



证 明 书

(2008)沪虹证外经字第157号

兹证明前面的(2008)沪虹证外经字第156号公证书
的英文译本内容与该公证书的中文原本相符。

中华人民共和国上海市虹口公证处

公 证 员



二〇〇八年八月十七日



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ADC 20070150 NO 487 P 1

K&T Associates Inc.

P.O. Box 5906, Concord, CA 94524

INVOICE NUMBER	PO NUMBER	SMOOTH AMOUNT
F616NL243246254	#216716225764256772	\$151,973.6
F616NL260	#217317217312	\$17,932.40
F616NL269270	#213757216763225764256772	\$175,032.2
Total Amount		\$344,938.2

Payment Schedule

February - \$2,000.00

March - \$20,000.00

April to July - \$30,000.00 per month

August - December - \$42,143.43 per month

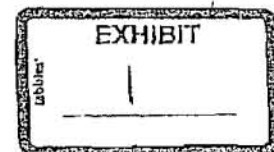
Finished pay back Win-Wing Total Amount \$352,717.15 (This money is Win-Wing's cost already deduct our commission) by end 2007 year.

Because of delayed payment, all the interest and exchange rate charge occurred during above-mentioned period of time will bear to our K&T account.

If K&T Associates Inc.'s business is not so good, Oak Hills Hardwood Floors must instead of K&T Associates Inc. return above-mentioned the money to Win-Wing.

Tanya Wotman
K&T Associates, Inc.

Tanya Wotman
Oak Hills Hardwood Floors.



EDWARD E. COREY (SB #124900)
COREY & COREY

3580 Wilshire Boulevard
17th Floor
Los Angeles, CA 90010
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Counsel for SHANGHAI WIN-WING IMP. &
EXP. CO, LTD., Plaintiff.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAGHAI WIN-WING IMP. & EXP. CO, LTD.,)	No. 3:08-CV-02031-SC
)	
Plaintiff,)	ORDER ON APPLICATION FOR
)	DEFAULT JUDGMENT AND
vs.)	DEFAULT JUDGMENT FOR SUM
)	CERTAIN PURSUANT TO FED. R.
)	CIV. P. 55(b)(1)
TETSUYA WATANABE, OAKHILLS HARDWOOD FLOORS, INC., K&T ASSOCIATES, INC.)	
)	
Defendants.)	
_____)	

Upon review of Plaintiff' Application for Default Judgment for
Sum Certain Pursuant to Fed. R. Civ. P. 55(b)(1), and for good cause
shown, said Application is hereby granted.

Pursuant to Fed. R. Civ. P. 55(b)(1), default judgment is hereby
entered in favor of Plaintiff Shanghai Win-Wing Imp. & Exp. Co, Ltd.
and against Defendants Tetsuya Watanabe, Oakhills Hardwood Floors,
Inc. and K&T Associates, Inc., jointly and severally, for the sum

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1 certain of \$342,717.15.

2 IT IS SO ENTERED.

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4 Clerk of Court, United States District Court
5 Northern District of California
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